

13-4725

Yale-New Haven Hospital v. Nicholls, et al.

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

August Term, 2015

(Argued: October 16, 2014 Decided: January 22, 2016)

Docket No. 13-4725

Yale-New Haven Hospital,
Interpleader-Plaintiff,

v.

Claire M. Nicholls,
Defendant-Cross-Defendant-Appellee,

v.

Barbara Nicholls,
Defendant-Cross-Claimant-Appellant.

Before: KEARSE, STRAUB, and WESLEY, *Circuit Judges.*

A petition for panel rehearing having been made by Defendant-Cross-Claimant-Appellant Barbara Nicholls, the petition is hereby **DENIED**. Judge Wesley dissents from the denial of panel rehearing in a separate opinion.

KENNETH VOTRE, Votre & Associates, P.C., East
Haven, CT, *for Defendant-Cross-Claimant-Appellant
Barbara Nicholls.*

SUSAN E. NUGENT, Murphy & Nugent, LLC, New
Haven, CT, *for Defendant-Cross-Defendant-Appellee
Claire M. Nicholls.*

ORDER

A petition for panel rehearing having been made by Defendant-Cross-Claimant-Appellant Barbara Nicholls, the petition is hereby **DENIED**.

Judge Wesley dissents from the denial of panel rehearing in a separate opinion.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

The image shows a handwritten signature in black ink that reads "Catherine O'Hagan Wolfe". The signature is written over a circular official seal. The seal has a red outer ring with the words "UNITED STATES" at the top and "COURT OF APPEALS" at the bottom. Inside the ring, the words "SECOND CIRCUIT" are written in blue. There are two small blue stars on either side of the text "SECOND CIRCUIT".

WESLEY, *Circuit Judge*, dissenting from the denial of panel rehearing:

I dissent from the denial of panel rehearing for the reasons stated in my opinion concurring in part and dissenting in part in *Yale-New Haven Hospital v. Nicholls*, 788 F.3d 79 (2d Cir. 2015).

Shortly before our decision in *Nicholls*, the Supreme Court of Virginia, over the vigorous dissent of three of its members, including the Chief Justice, upheld a state intermediate appellate court opinion that decided substantially the issue presented here. *See Cowser-Griffin v. Griffin*, 771 S.E.2d 660 (Va. 2015), *cert. denied*, No. 14-1531, 2016 WL 100359 (U.S. Jan. 11, 2016). The Virginia appellant then filed an unsuccessful petition for a writ of certiorari in the United States Supreme Court, *see* 2015 WL 3918905 (U.S. June 24, 2015), which the Virginia appellee opposed principally on the ground that the posthumous qualified domestic relations order there assigned to an alternate payee payable *lump-sum* benefits, as opposed to *annuity* benefits, and thus no conflict existed between the decision of Supreme Court of Virginia and those of other state supreme courts or federal courts of appeals, *see* 2015 WL 7770869 (U.S. Nov. 10, 2015).

Without commenting on the merits of such a distinction, I would note that *Nicholls* squarely presents this important ERISA question in the context of annuity benefits.